

**Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Advanced Television Systems )  
And Their Impact Upon The )  
Existing Television Broadcast )  
Service )

MM Docket No. 87-268

To: The Commission:

**PETITION FOR PARTIAL RECONSIDERATION**

Western New York Public Broadcasting Association (Association), through its attorneys, hereby files this Petition for Partial Reconsideration of the Memorandum Opinion and Order on reconsideration of the Fifth Report and Order (Memo O & O I), and the Memorandum Opinion and Order on reconsideration of the Sixth Report and Order (Memo O & O II) in the above-captioned DTV proceedings. In support thereof, the following is shown:

1. The Association is the licensee of public television Stations WNED-TV, Channel 17 and WNEQ-TV, Channel \*23, Buffalo, New York. In addition, the Association has a pending application, filed July 25, 1990 for a new public television station on Channel \*46 at Jamestown, New York (File No. BPET-900725 ).
2. In its Petition for Reconsideration in this proceeding, the Association sought confirmation of the protection of its Jamestown application. Moreover, in an Opposition to Petition for Partial Reconsideration, filed September 23, 1997, the Association opposed a proposal by Jet Broadcasting Co., Inc., (Jet) for substitution of Channel 42 for Channel 58 at Erie, Pennsylvania, since it had failed to take into account the Association's pending application for use of Channel \*46 at Jamestown, New York .

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2. In its reconsideration decision concerning the Sixth Report and Order (Memo O & O II par. 368, fn. 140), the Commission stated that “we note that one of the goals in developing the DTV allotments was to provide for replication of stations’ existing service areas, and that because the channel 46 allotment was in the freeze area, it was not protected.”

3. The Association requests reconsideration of the Commission’s arbitrary and capricious action regarding the application by the Association for a new public television satellite station on Channel \*46 at Jamestown, New York. The Commission has offered no reasoned analysis for its action. The Association is entitled to a full and rational explanation for the disparate treatment accorded its application at Jamestown, in light of the policy articulated by the Commission in its Memo O & O II, par. 11, favoring grants to new NTSC permittees where applications were pending as of April 3, 1997.

4. It is apparent that the basis for the Commission’s action with respect to the Association’s proposal at Jamestown is the application of its TV freeze policy, articulated in 1987 at the commencement of its consideration of DTV technologies. Under that policy, the Commission instituted a freeze on applications for thirty markets and surrounding areas. Order, Advanced Television Systems, RM-5811, FCC Mimeo 4074, released July 17, 1987. However, the Commission specifically stated that it

will also consider waiver requests on a case-by-case basis for non-commercial educational channels, or for applicants which provide compelling reasons why this freeze should not apply to their particular situations or class of stations.

5. With respect to its Jamestown application, the Association included an extensive request for waiver of the TV freeze rule. The Association stressed that the channel proposed for use had been reserved for noncommercial educational purposes for many

years. The proposed usage in Jamestown confirmed and assured this noncommercial educational usage. The Association proposed operation on a satellite basis so that it would have no appreciable effect upon the Commission's DTV deliberations.

Accordingly, the Association stressed that the processing of its application would further the Commission's policies advancing noncommercial educational television usage of allotted reserved channels without adverse impact upon Commission DTV concerns.

The Association underscored that it sought public television satellite operations instead of existing TV translator operations on Station W46BA, which are secondary in nature.

The Association had direct experience with the costs, the disruptions and the consequent inconvenience to schools and to the public of the area through forced replacement of secondary public broadcast service.

5. The Association serves a unique blend of urban-suburban-rural communities in the Jamestown area. Jamestown is a small city surrounded by a number of small towns and lacks the cultural advantages enjoyed by residents of metropolitan areas. The proposed satellite facility would provide much-needed service to a poorly served area. The Association is particularly concerned about the future viability of its rural service in the hilly terrain of the Chatauqua County region. The only feasible way of serving the area is through the guaranteed status of public broadcast satellite service. Furthermore, the new satellite transmitter would increase power to 5000 watts (as compared to the current 1000-watt translator power). Accordingly, the radius of the Grade B signal will approximately double in size, permitting expanded service to a larger audience. For instance, coverage will be extended for the first time into the Allegany Indian Reservation to serve Native Americans as far away as Salamanca,

New York. In light of inherent technical and funding limitations, the proposed station at Jamestown would be the most efficient means for providing this area with high quality noncommercial educational programming on a primary rather than a secondary basis. As such, the Association's waiver request demonstrated "compelling reasons" why the freeze should not apply to its application "for non-commercial educational channels."

5. The Commission does not even advert to the Association's request for waiver of the TV freeze nor does it address any of the substantive matters or special circumstances set forth above, which have been taken from the exhibit appended to the Association's Jamestown applications. The Commission's action is totally conclusory in nature. The Association is entitled to a fair and objective assessment of its waiver request. In its 1987 TV freeze policy Order, the Commission encouraged waiver requests "for noncommercial educational channels" and for applicants providing "compelling reasons" for waiver. The Association's request falls clearly within this classification and deserves sympathetic consideration by the Commission. Accordingly, the Association urges the Commission upon reconsideration to review with care the showing set forth in the Jamestown application by the Association in support of waiver of the TV freeze and to grant protection of that Jamestown application.

6. This application by the Association was filed on July 25, 1990, nearly eight years ago and far in advance of the Commission's deadline of April 3, 1997 for the protection of applications for new NTSC public television stations. Under any normal processing schedule, this Jamestown application would and should have been granted many years ago. In its Sixth Report and Order, pars. 108 and 112, in this DTV proceeding the Commission indicated that it "will maintain and protect those vacant NTSC

allotments that are the subject of pending applications.” Again, in its 1987 TV freeze Order, the Commission evinced its interest in protecting public broadcast applications on reserved channels through waiver of the TV freeze policy for such public interest proposals. The Association urges the Commission to act swiftly to confirm the protection for DTV purposes of its long-pending application at Jamestown. In this way, it provides assurance that entities such as the Association “who have begun to invest in new stations, including those planning noncommercial stations, may continue to pursue their ongoing station development projects.” Sixth Report, supra, at par 112.

WHEREFORE, for all of the foregoing reasons, the Commission should reconsider and grant relief in the respects described above.

Respectfully submitted,

MISSISSIPPI AUTHORITY FOR  
EDUCATIONAL TELEVISION

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